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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/772,007	02/05/2004	David C. Salyer SR.	1413	4102

7590 07/22/2004

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Akron, OH 44308

EXAMINER

ADDIE, RAYMOND W

ART UNIT	PAPER NUMBER
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3671

DATE MAILED: 07/22/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/772,007

Applicant(s)

SALYER, DAVID C.

Examiner

Raymond W. Addie

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 05 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 February 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 02/05/04.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

Claims 1, 2, 5, 6-9 are rejected under 35 U.S.C. 102(a) as being anticipated by

Kiedaisch et al. # 6,551,010 B1.

Kiedaisch et al. discloses an energy absorbing safety barrier system (10) comprising:

A barrier wall (unnumbered).

A plurality of individual support structures (14) which are affixed, by fasteners (64) to the barrier wall in an overlapping manner.

A plurality of fins (16) affixed to said support structures (14).

Said plurality of fins (16) being deformable for dissipating energy generated by impact of a vehicle.

Said plurality of fins being disposed at an acute angle to the direction of traffic.

Said fins are equidistantly spaced apart, such that when a 1<sup>st</sup> fin is displaced the motion generates a cascade of displacement, by friction, of said plurality of fins adjacent said first fin, thereby dissipating energy away from said vehicle. See col. 1, cols. 3-5.

In regards to claim 5, although Kiedaisch et al. does not explicitly recite welding the fins to the plurality of plates, Kiedaisch et al. clearly discloses alternative embodiments,

wherein a separate barrier wall supports the support structures (14) via fasteners (64), which are integral with the barrier wall. Further, Kiedaisch et al. clearly discloses the support structures could alternatively be made of materials, other than concrete, and can constitute individual structures having overlapping ends, thereby supporting the plurality of fins at a desired height adjacent a roadway. Hence, it is inherent Kiedaisch et al. discloses the use of a support structure (14), such as a guard rail or metal plate, which are known in the art, mounted to a barrier wall, to support a plurality of fins, via a plurality of fasteners (64), which inherently would have to be welded to the metallic support structure (14).

***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kiedaisch et al.

# 6,551,010 B1 in view of Bastis et al. # 3,140,885.

Kiedaisch et al. discloses the use of support structures (14), in plate form, that can be concrete or alternative materials, but does not disclose how the support structures are disposed in overlapping relation. However, Bastis et al. teaches support plates (10) such as guard rails can be interconnected via a plurality of overlapping lap joints to

permit "nesting" of the support plate ends, thus forming an elongated barrier for use near roadways, as illustrated in Fig. 1. See col. 1. Therefore, it would have been obvious to one of ordinary skill in the art, at the time the invention was made to provide the support plates of Kiedaisch et al. nested lap joints, as taught by Bastis et al., in order to secure the overlapping ends to a barrier wall, as reasonably suggested by Kiedaisch et al. See col. 1.

3. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Kiedaisch et al. # 6,551,010 B1 in view of Kiedaisch et al. # 6309140 B1.

Kiedaisch et al. '010 discloses an energy absorbing system (10) comprising a plurality of fins (16) mounted to a plurality of support plates (14), having overlapping ends, and can be made of concrete or alternative materials, but does not disclose the use of steel. However, Kiedaisch et al. '140 teaches an energy absorbing barrier system (10) comprising a plurality of overlapping fins (58) mounted to a barrier wall (18) via a plurality of support plates (144), which are made of A36 (mild) steel. See col. 3, ln. 20-col. 4, ln. 50; Col. 7, lns. 20-65.

### **Conclusion**

4. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Russell # 6,702,511 discloses a crash guard having fins mounted to a retaining wall.

Stephens et al. # 4,583,716 discloses an energy absorbing crash guard with fins.  
Walker # 3,982,734 discloses an impact barrier with overlapping fins. White #  
2,974,934 discloses a safety barrier with hinged fins.

5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Raymond W. Addie whose telephone number is 703 305-0135. The examiner can normally be reached on 8-2, 6-8.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas B. Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
**Raymond Addie**  
**Patent Examiner**  
**Group 3600**

7/20/04